

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

STEVEN IRWIN, a single man,

Plaintiff,

vs.

TACOMA GOODWILL INDUSTRIES,
a non-profit, public benefit corporation,

Defendant.

No. CV-06-3024-EFS

AGREED PROTECTIVE ORDER

This matter having come before the Court upon the Parties' Joint Motion For a Protective Order (Ct. Rec. 21), and good cause being shown, it is hereby ORDERED that a Protective Order shall be issued in accordance with Civil Rule 26(c). It is further ORDERED that:

This Order shall govern the designation, production, handling, and treatment of, as well as the provision of access to the public, of all confidential documents and information obtained or observed by the parties or their agents which are confidential pursuant to state or federal law and which are obtained or observed as a result of or in the course of this litigation. The purpose of this Order is to protect proprietary

1 information and trade secrets and the privacy of the individuals whose confidential
2 information is sought in discovery or will be used at trial.

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4 **Definitions**

5 1. “Confidential Information” includes information that is confidential, proprietary
6 or a trade secret. “Confidential Information” may include personnel information,
7 information about persons with disabilities, medical or healthcare information, personal
8 financial information, non-public business information and other information that
9 constitutes a trade secret.

10 2. The terms “Counsel” or “Attorney” means counsel of record for the parties of this
11 action.

12 3. The term “Designating Person” shall mean a Person who produces information
13 and designates it as Confidential Information.

14 4. The term “Receiving Person” shall mean a person who has access to Confidential
15 Information.

16 5. The term “Qualified Person” shall mean:

17 a. The attorneys for the parties, their legal assistants, and members of their
18 support staffs.
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1 b. The Judge assigned to and/or presiding over this lawsuit and members of
2 the Court's legal and support staff and the jury.

3 c. Any independent expert who is retained or consulted by counsel solely for
4 the purpose of assisting in this action.

5 d. Any other person who is designated as a "Qualified Person" by order of the
6 Court or by written agreement of the parties pursuant to the provisions of this Order.

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8 **Use of Confidential Material**

9 6. Confidential records shall be used solely for the purpose of conducting this
10 litigation, Cause No. CV-06-3024-EFS, unless the person who is the subject of such
11 confidential material, or that person's legal guardian, if applicable, authorizes its use for
12 any other particular purpose. Confidential information shall be disclosed only to
13 Qualified Persons. Except for disclosure to court personnel described in Paragraph 5b
14 and governed by Local Rule 10.1(j), disclosure to a Qualified Person will occur only after
15 such Person has been provided with a copy of this Protective Order and such Person has
16 agreed in writing to abide by and comply with the terms and provisions of this Protective
17 Order. A party may, subject to the rules of evidence and order of the Court, use any
18 confidential information for any purposes at trial or at any hearing before a judicial
19 officer in the above entitled action. Any confidential information used in any court
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1 proceeding shall not lose its confidential status through such use, unless the Court orders
2 otherwise.

3 7. Nothing in this Order shall prevent any person from making use of any information
4 that is designated as Confidential Information if such information:

5 a. was lawfully in his or her possession prior to receipt under the provisions of
6 this Order;

7 b. was or becomes available to the public through no fault of the Receiving
8 Person;

9 c. was or is obtained from a source not under an obligation of secrecy to the
10 Designating Person; or

11 d. is exempted from the operation of this Order by written consent of the
12 Designating Person.

13 8. If any person challenges the designation or any information as Confidential
14 Information, such information shall nevertheless be treated as Confidential
15 Information within the provisions of this Order until such designation is removed
16 by order of the Court or written consent of the Designating Person.
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Disclosure of Confidential Information

9. A document that contains or reveals Confidential Information may be shown to any person indicated in such document to be its originator, author or recipient.

10. A document that contains or reveals Confidential Information may be copied by an independent commercial copying service, and an exhibit based upon such a document may be prepared by an independent printer or illustrator.

11. Confidential Information may be disclosed to stenographic and/or videographic reporters, official court reporters, and their assistants who are engaged in such proceedings as are necessary for the preparation and trial of this action.

12. Nothing in this Order shall prevent disclosure of Confidential Information if the Designating Person consents to such disclosure or if the Court, after notice to all parties, orders such disclosure.

13. Should any confidential information be disclosed, through inadvertence or otherwise, to any person not authorized to receive it under this Protective Order, then the disclosing person(s) shall promptly: (a) identify the recipient(s) and the circumstances of the unauthorized disclosure to the relevant producing person(s); and (b) use best efforts to bind the recipients to the terms of this Protective Order. No information shall lose its

1 confidential status because of its disclosure to a person not authorized to receive it under
2 this Protective Order.

3 **Identification and Marking of Confidential Information**

4 14. Upon agreement to the terms of this Order by the parties, as evidenced by
5 execution of the Order by counsel, any document or tangible thing that contains or
6 reveals Confidential Information shall be labeled "CONFIDENTIAL." Such marking
7 shall appear on each page of the document that contains Confidential Information. Any
8 document or other tangible thing so labeled shall be treated in accordance with the
9 provisions of this Order. Any Confidential Information not reduced to documentary or
10 physical form shall be designated by serving a written notification upon the Receiving
11 Person.
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14 15. When a party initially produces documents for inspection, no marking need be
15 made by the producing party in advance of the inspection. For purposes of the
16 inspection, all documents shall be treated as containing Confidential Information, and
17 only counsel shall be present to inspect such documents. After the Receiving Person
18 selects documents for copying, the Designating Person may appropriately mark the
19 copies of the selected documents as Confidential Information before they are provided to
20 the Receiving Person.
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1 16. Information disclosed at the deposition of a party or one of its present or former
2 officers, directors, employees, agents or consultants, may be designated Confidential
3 Information by serving a written notification on each party within 10 days of receipt of
4 the transcript by counsel for the Designating Person, or within 10 days of entry of this
5 Order, whichever is later. For depositions taken after entry of this Order, counsel shall
6 first indicate before the conclusion of the deposition that the deposition contains
7 Confidential Information. Written notification designating Confidential Information shall
8 identify the specific pages and lines of the transcript that contain confidential
9 information. A copy of such notification shall be provided to each party and attached to
10 the face of the transcript and each copy of the transcript. If counsel indicates before the
11 conclusion of a deposition that the deposition contains Confidential Information, all
12 information disclosed during a deposition shall be treated as Confidential Information for
13 10 days after a transcript of the deposition is received by counsel for each of the parties.
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16 **Challenges to the Designation of Confidential Information**

17 17. In the event a party disagrees at any time with a designation, the party shall make a
18 good-faith attempt to resolve the dispute on an informal basis. If the parties cannot
19 resolve the dispute, the objecting party may seek appropriate relief from the Court.
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1 18. The Court Clerk is directed to maintain under seal any pleading or other paper filed
2 with the Court that has been designated, in whole or in part, as containing or revealing
3 Confidential Information. Only the Confidential Information will be filed under seal. The
4 pleadings, motions, affidavits, declarations, deposition transcripts, briefs, or other
5 documents filed with the Court will not be filed under seal.
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7 19. In the event a party wishes to use any Confidential Information in any pleading or
8 other paper filed with the Court, the party shall observe Local Rule 10.1 (j) Policy on
9 Privacy and Public Access to Electronic Case Files and include the following legend:
10 “CONFIDENTIAL INFORMATION; FILED PURSUANT TO PROTECTIVE
11 ORDER.”
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13 **Advice to Client**

14 20. Nothing in this Order shall bar or otherwise restrict an attorney from rendering
15 advice to his or her client.

16 **Preservation of Rights and Privileges**

17 21. Nothing contained in this Protective Order shall (1) affect the right of any party or
18 witness to make any other type of objection or claim or (2) diminish the Washington
19 Protection and Advocacy System's federal access rights under 42 U.S.C. § 10801, et seq.;
20 as amended; 42 U.S.C. § 15041, et seq. and the regulations promulgated thereto.
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Termination of Lawsuit

22. Within 90 days after the termination of this lawsuit, each document and other tangible thing that contains or reveals Confidential Information, and any copies, abstracts, or summaries, shall either be (a) returned to the attorney of record for the producing party or (b) destroyed with a representation of such destruction being made to the attorney of record for the producing party. Any portion of the official record that contains Confidential Information shall be exempt from this provision. As to those materials which contain confidential information, but constitute or reflect counsel's work product, all such work product and all copies shall either be destroyed or retained by counsel in a secure place, subject to this Protective Order.

23. This Protective Order shall remain in full force and effect until modified, superseded, or terminated by consent of the parties or by Order of this Court made upon reasonable written request.

DATED this _____ day of _____, 2006.

CENTER FOR JUSTICE

By: /s/ Andrea Poplawski on
Andrea Poplawski, WSBA #32246
Attorneys for Plaintiff

1 By: /s/ Breean L. Beggs on
2 Breean L. Beggs, WSBA #20795
Attorneys for Plaintiff

3 WASHINGTON PROTECTION & ADVOCACY
4 SYSTEM

5 By: /s/ Deborah A. Dorfman on
6 Deborah A. Dorfman, WSBA #23823
Attorneys for Plaintiff

7 By: /s/ Michael J. Smith on
8 Michael J. Smith, WSBA #14111
Attorneys for Plaintiff

9
10 GORDON, THOMAS, HONEYWELL, MALANCA,
PETERSON & DAHEIM LLP

11 By: /s/ Warren E. Martin on
12 Warren E. Martin, WSBA No. 17235
13 wmartin@gth-law.com
Attorneys for Defendant

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16 The Joint Motion for Protective Order by all parties (**Ct. Rec. 21**) is **GRANTED**.

17 **ORDER ENTERED** this 26th day of February, 2007.
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19 s/ Edward F. Shea
20 EDWARD F. SHEA
UNITED STATES DISTRICT COURT JUDGE

1 Presented by:
2 CENTER FOR JUSTICE

3 By: /s/ Andrea Poplawski on
4 Andrea Poplawski, WSBA #32246
Attorneys for Plaintiff

5
6 By: /s/ Breean L. Beggs on
Breean L. Beggs, WSBA #20795

7 Attorneys for Plaintiff

8
9 Copy Received; Approved as to Form; Notice
of Presentation Waived:

10 WASHINGTON PROTECTION & ADVOCACY
11 SYSTEM

12 _____
13 Michael J. Smith
14 Washington Protection & Advocacy System
15 Attorney for Plaintiff
16 Telephone: (206) 324-1521
17 Fax: (206) 957-0729

18 By: /s/ Deborah A. Dorfman on
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20 By: /s/ Warren E. Martin on
21 warren E. Martin, WSBA No. 17235
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Attorneys for Defendant